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Highlights of The Child and Family Services Act



Please Note

This booklet highlights several parts of the new Act and emphasizes selected provisions that are new or changed from present statutes. There has been no attempt to summarize the entire Act nor to present the exact wording of specific sections. For this, reference should be made to the Child and Family Services Act, 1984.

Copies of the Child and Family Services Act, 1984 can be purchased from the Ontario Government Bookstore, Publications Centre, 5th Floor, 880 Bay Street, Toronto, M7A 1N8. Information and Mail Order Service: (416) 965-6015, Toll-free 1-800-268-7540.

Additional copies of this Highlights booklet can be obtained by contacting Communications Group, Room M1-51 Macdonald Block, Queen's Park, Toronto, M7A 1E9, (416) 965-7825.

Cette publication est également disponible en français.

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Introduction

The new Child and Family Services Act is one of the most significant pieces of social policy legislation passed in recent years. It is the result of several years of public consultation between people who recognized and responded to the need to reform the province's legislation dealing with children.

The new Act encompasses services provided to children under the Ministry of Community and Social Services that were governed by many separate acts and consolidates them under a single piece of legislation. It eliminates the inconsistencies, simplifies the law, addresses new legal issues and ensures that the legislation conforms with the equality provisions of the Charter of Rights and Freedoms.

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- Child Welfare Act
 - Children's Residential Services Act
 - Children's Mental Health Services Act
 - Young Offenders Implementation Act (passed in 1984 incorporating the Training Schools Act, the Children's Probation Act and parts of the Provincial Courts Act)
 - Children's Institutions Act
 - Developmental Services Act
 - Homes for Retarded Persons Act
 - Charitable Institutions Act
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The Act attempts to present one cohesive philosophy for services to children and families and the protection of children. Principles that should guide decision-makers working

with children are clearly defined. It states unequivocally that the well-being, best interest and protection of children must take precedence over any other consideration. But it also recognizes the essential nature of the family and the need for services to be supportive and where possible provided on the basis of mutual consent. The Act reinforces the philosophy that community living is preferable to institutional living or open facilities to locked ones through guidelines that direct courts and service providers to seek out the least restrictive or drastic alternative when intervention is necessary.

The new Child and Family Services Act has restructured and clarified the definition of a child in need of protection, setting forth clear, objective grounds which concentrate on specific harms from which a child must be protected. In its focus on protecting children, the Act establishes special safeguards and guarantees for children in distress, as well as emphasizing their fundamental rights.

Other issues addressed in the legislation include access to and confidentiality of records; the use of extraordinary measures such as secure treatment and secure isolation or intrusive procedures; the rights, special heritage and culture of Canada's Indian and Native peoples; and review of residential placements, particularly in institutions.

The new Act is built upon several years of consultation, public debate, legislative development and discussions with professionals and other interested groups and individuals. It has been reviewed extensively by the all-party Standing Committee on Social Development of the Ontario Legislature. The responses, criticisms and suggestions were listened to and many were incorporated into this legislation which strives to strike a balance among many considerations including professional, legal, clinical and necessary rights and protections for children and their families. The Child and Family Services Act constitutes an important milestone for a strengthened child and family social services system.

The Child and Family Services Act has received Royal Assent on December 14, 1984. This signifies that all stages of the parliamentary process have been completed. However, it does not become law immediately. An Act only becomes law when it has been proclaimed.

Proclamation of the Child and Family Services Act is expected to take place July 1, 1985. Planning for implementation has been underway for several months, and work continues to ensure a smooth transition to the new statute.

Some of the terms that will be found in the Act and in this booklet.

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| Child Protection Worker | – is a new term that encompasses all people empowered under this Act to bring a child before the court, apprehend a child with or without warrant and remove a child to a place of safety |
| Children's Services Review Board | – was appointed by the Lieutenant-Governor-In-Council under the Children's Residential Services Act with responsibilities that include appeals of a Director's decisions about licence applications for children's residences, day care and adoption agencies. The Board continues under the new Act with additional responsibilities referred to in this booklet. |
| Crown Ward | – is a child for whom parental rights have been terminated by an order of the court |
| Developmental Handicap | – means a condition of mental impairment present or occurring in the child's formative years that is associated with limitations in adaptive behaviour |
| Director | – is a person appointed by the Minister to carry out specific duties and functions under this Act |
| Foster Care | – means a child is receiving residential care from a person who is not the child's parent |
| Indian or Native Person | – is an Indian, with the same meaning as in the Indian Act (Canada) or a native child or adult who is a member of a native community designated by the Minister under section 192 of the C.F.S.A. (Section 3) |
| Institution | – is a children's residence, other than a maternity home, operated by the Minister or under a license with a capacity to provide residential services to 10 or more children, and may be a building, group of buildings or part of a building. |
| Mental Disorder | – means a substantial disorder of emotional processes, thought or cognition which grossly impairs a person's capacity to make reasoned judgements |
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Place of Safety	- means a foster home, hospital or a facility designated as such by the Ministry of Community and Social Services (Section 37)
Provincial Director	- is a term used in the Young Offenders Act (Canada) and is a person appointed by the Minister to carry specific duties under that Act and under Part IV (Young Offenders) of this Act.
Residential Care	- means a child is living away from home in a supervised setting.
Special Need	- means a need that is related to or caused by a behavioural, developmental, emotional, physical, mental or other handicap
Society Ward	- is a child who is temporarily placed in the care and custody of a children's aid society for a maximum period of two years

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Declaration of Principles

The philosophy of the new Act is outlined in provisions which contain the “Declaration of Principles.” These principles are designed to help everyone understand the spirit and intent of the Act and to be a guide for those responsible for making decisions.

Key Principles

The key principles are as follows:

- A paramount goal is to promote the best interests, protection and well-being of children.
- When families need help, that help should support and strengthen the family unit with the least amount of interference, and be, wherever possible, based on mutual consent.
- The least restrictive or disruptive course of action that is available and appropriate should be followed.
- Children should receive services that are tailored to their needs and respect differences in culture, religion, background and physical and mental development.
- Indian and Native people should be entitled to provide, wherever possible, their own child and family services and all services to Indian and Native children and families should be provided in a manner that recognizes their culture, heritage and traditions and the concept of the extended family.

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- Services shall, where appropriate, be provided in the French language.
 - Children need stability.
 - Children and parents should have the right, where appropriate, to participate in deliberations that affect them. Decisions affecting their rights and interests must be made in a uniform and consistent manner and with procedural safeguards. (Sections 1 and 2).
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Least Restrictive Alternative

The new Act frequently directs courts and service providers to use the “least restrictive alternative” in deciding what action should be taken to help children and families. This concept means that when there is a choice between services which appropriately meet the child’s needs, the least restrictive service should be provided. For example, a child’s own home is preferable to a foster home, a small residence to a larger one, and voluntarily arranged services to court ordered intervention.

Consent

The question of consent is central to the social services system. For the first time, the law clarifies what constitutes a valid consent given by an adult or child.

Consent is valid only if the person:

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- has the ability to understand to what he or she is consenting;
 - gives the consent voluntarily;
 - is reasonably informed of the nature and consequences of the consent or agreement, and the alternatives; and
 - has had an opportunity to obtain independent advice, for example from a family member, advocate, lawyer, social worker or other professional.
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To achieve the objectives of this Act, services must be responsive to the changing needs of children and families. Part I of the Act allows for flexibility in the administration and structure of services. This part also gives broad authority to the Minister to fund a wide range of agencies and service providers, and continues provisions that ensure accountability.

While moving toward greater flexibility in the provision of services, the Act recognizes that continuity and stability in the service system is essential to the well-being of children. The changes in the service system structure are expected to be gradual and evolutionary. Funding mechanisms will be consolidated and approvals already in place will continue on proclamation.

Service Categories

The Act establishes five broad categories of children's services. (Section 3). These are:

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| • child welfare | – which are residential or non-residential, prevention, child protection, adoption and individual or family counselling services |
| • child treatment | – which are services for children with mental or psychiatric disorders (and/or their families) |
| • child development | – which are services for children with developmental or physical handicaps (and/or their families) |
| • community support | – which are support or prevention services provided in the community for children and their families |

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- young offenders – which are services for young persons in conflict with the law
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These broad statutory definitions provide the basis for service providers, by negotiation with the Ministry, to provide services that are responsive to local and community needs. Service providers may be approved to provide one or more services as defined under the five broad categories.

Children's Aid Societies

In addition to the broad service categories, the Act continues to provide for the designation of children's aid societies. (Section 15) Existing designations and approvals of agencies will continue after proclamation.

Societies have been specifically addressed in the Act to emphasize the importance and essential nature of child protection services.

Powers of Intervention

The powers of the Minister to take over the management and operation of a children's aid society or to revoke the approval of other approved agencies continue. The Act also contains provisions to ensure procedural fairness and, for the first time, gives all approved agencies the right to a hearing. (Section 22 to 24)

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Voluntary Access to Services

When children and their families seek assistance or need help, services may be provided on a mutually agreeable, voluntary basis or may be imposed by the court. Part II of the Act continues to recognize that people may initiate requests for services and provides criteria for the provision of services on a voluntary basis.

Whose Consent is Required?

The Act distinguishes between children 16 and over and those under 16. Parental consent is required for the residential placement of a child under 16. Children 16 years of age or over may consent, on their own, to all services provided under this Act, except those ordered by a court. (Section 27)

At the same time, children 12 to 16 years of age are entitled to seek confidential counselling on their own. However, the counsellor must discuss with the child, at the earliest opportunity, the desirability of involving the child's parents. (Section 28)

Temporary Care Agreement

The Act continues provisions that allow parents who are temporarily unable to care adequately for their children to agree to their local children's aid society caring for the children on a short-term basis. Care by agreement, in keeping

with the voluntary nature of these services, does not involve the courts. Consistent with the Act's principles, a child 12 or over must consent to the temporary care agreement. This does not apply where an assessment that was carried out not more than a year earlier indicates that the child is unable to participate because of a developmental handicap. Temporary agreements do not apply to children 16 or older. (Section 29)

During such an agreement, which may not initially exceed six months, the legal custody of the child transfers to the children's aid society. The agreement can be extended to a maximum of 12 months. (Section 29 (5))

Special Needs Agreements

Services may be provided to a child with special needs and the Act continues provisions for special needs agreements. Parents of children with special needs caused by a behavioural, developmental, emotional, physical, mental or other handicap may enter into these agreements with their local children's aid society, or directly with the Minister. (Section 30)

Review of Residential Placements

Placing a child in long-term residential care, even with the parent's consent, is a serious decision with far-reaching consequences. To ensure that children receive the most appropriate residential placement to meet their needs and to minimize the potential risks, the new Act establishes for the first time local groups called Residential Placement Advisory Committees. (Section 34)

These committees:

- provide advisory assistance to parents and professionals seeking out- of-home placements for children;
- will be composed of local professionals and other interested persons, and may include a representative of a Band or Native community;
- shall conduct a review as soon as possible and within 45 days, of every child placed in an institution, where the placement is intended to last 90 days or more (an institution is a place where 10 or more children may reside);
- shall conduct a review between 14 to 21 days after a child is placed in a residential setting if the child is over 12 and objects to the placement;

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- shall re-review placements every 9 months while the placement continues;
 - shall review the cases of all children in institutional care placed prior to the passage of this Act; and
 - may review any residential placement at the request of another person, the Minister or at its own discretion;
 - shall advise the child, service provider, parent and if he or she is an Indian or Native child, a representative of the child's Band or Native community of its recommendations.
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Further Review

If a child 12 years of age or over is not satisfied with a recommendation of the Residential Placement Advisory Committee, or if the recommendation is not followed, the child can appeal to the Children's Services Review Board, whose decision is binding. The Board may order that the child be transferred to another residence, if available, or discharged, or may confirm the existing placement. (Section 36)

A fundamental goal of child protection legislation is to specify the grounds on which the state may, without the parent's consent, intervene to protect children. The grounds outlined in Part III of the new Act represent a more precise and objective minimum standard of care, concentrating on specific harms from which children must be protected. While this part contains many new provisions, the process for dealing with a child in need of protection remains relatively unchanged.

When does a child need Protection?

A child is in need of protection where the child:

- has suffered, or there is substantial risk the child will suffer
 - physical harm;
 - sexual molestation or sexual exploitation;
 - emotional harm, demonstrated by severe anxiety, depression, withdrawal or self-destructive behaviour;
- needs treatment for
 - a medical problem,
 - a mental, emotional or developmental condition and the person in charge refuses or is unable to provide that treatment.
- is under 12 and has
 - killed, seriously injured another person or caused serious property damage and the person in charge refuses

or is unable to consent to treatment necessary to prevent a recurrence;

–a history of causing personal injury or property loss or damage and the person in charge encourages the activity or fails to adequately supervise the child.

- has been abandoned or the parents die without making adequate provision for the child's future care or the parents refuse to resume custody after a residential placement.
 - is brought before the court with the consent of the parents and, if the child is over 12, with the child's consent. (Section 37(2))
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Child Under 12

As a result of the Young Offenders Act (Canada) the minimum age of criminal responsibility has been raised from 7 to 12 years of age for offences committed under the Criminal Code and also for provincial offences. The behaviour of a child under 12 may be grounds for protection when police have reasonable and probable grounds to believe that the child has committed an act for which an older child could be found guilty of an offence. The Act gives authority to detain the child but with specific instructions to return the child home or, when this is not possible, to a place of safety. (Section 40 (10))

Curfew

Persons having charge of children under 16 shall not allow them to loiter or be in a place of entertainment without an adult between the hours of midnight and 6 a.m. Where this happens police may take the child home or if necessary to a place of safety similar to provisions for "Children under twelve". (Section 75)

Best Interests of the Child

The new Act repeatedly states that persons making decisions about the child must take into consideration the best interests of the child. The list of factors which should be considered has been expanded to include the child's:

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- physical, mental and emotional needs and stages of development;
 - cultural background and religious preference;
 - need for stability;
 - relationships by blood or adoption;
 - own views and wishes, if they can be obtained;
 - if an Indian or Native child, the importance of preserving the child's cultural identity. (Section 37 (3))
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Medical Examination

Upon apprehension and before a court hearing, if a child protection worker believes a child is in need of protection, the Act, for the first time, gives the worker the right to authorize a medical examination without the need of a parent's consent. (Section 40 (8))

Bringing a Child Before the Court

When there is a reasonable belief that a child is in need of protection, there are three ways the child can be brought before the court for a child protection hearing.

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- Unlike the current requirement that a child protection worker obtain an order of the court to produce the child before the Court, the process has been simplified. The worker is now permitted to commence a proceeding by a simple application to a court.
 - The current procedure remains unchanged with respect to apprehension of a child with a warrant
 - There is also the power, in an emergency when the child's health or safety is at risk, to permit apprehension without a warrant. (Section 40)
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In executing a warrant or in an emergency, a child protection worker has the authority to enter a premises, by force if necessary, to search for and remove the child to a place of safety. (Section 40 (14))

Custody during Adjournment

The new Act directs the court to specifically address the issue of who has custody of a child during an adjournment of a child protection hearing. For the first time, the courts are

directed to keep the child in the custody of the parents unless there is a substantial risk to the health and safety of the child. (Section 47))

The Act also stipulates that if the child is removed from the home during an adjournment, the court must make an order giving the family access unless it has reasons to believe such access would be detrimental to the child's well-being. (Section 55)

Long Delays Prevented

Where a determination of an application has not been made within three months of the commencement of proceedings the Act provides that the court shall fix a date for hearing the application. (Section 48)

Plan for Child

Once the court has decided a child is in need of protection, the Act requires the children's aid society to submit to the court, in writing, a plan for the child's care.

The plan must outline:

- what services will be provided and for how long;
- what conditions must improve before involvement by the children's aid society is no longer necessary;
- if removal from the home is being considered, an explanation of why the child cannot remain there; and,
- if permanent removal is proposed, a description of arrangements for long-term stable care. (Section 52)

Placing a Child

In deciding what action to take once a child has been deemed to be in need of protection, the court's options are similar to the previous legislation. There is however, an important addition and some significant changes that affect procedures. (Section 53)

A child can be:

- placed with or returned to the parents or other person, subject to supervision by a children's aid society, and related terms and conditions can be imposed on the parents, the society, the child or any other persons who participated in the hearing.

- made a ward of the children's aid society, which is responsible for the temporary care and custody of the child for a maximum of one year;
- made a Crown ward, where parental rights are permanently terminated and the child is then eligible for adoption; or
- returned to the person who had charge of the child before intervention but without a court order because the judge is satisfied that one is not needed to protect the child in the future.

Consistent with the philosophy that the least restrictive alternative be chosen for a child, the Act directs the court to keep the child at home, whenever possible. But if such an order is not right for the child, the Act, for the first time, asks the court to consider placing a child with a relative, neighbour or other community or extended family member before making the child a society ward. (Section 53 (4))

If the child must be made a society ward, the Act establishes strict guidelines which must be followed by the children's aid society in choosing a residential placement. The placement must represent the least restrictive alternative and if possible respect religious faith, linguistic and cultural heritage and the child's and parent's wishes. If an Indian or Native child, the placement shall be with the child's extended family, a member of the child's Band or Native community or another Indian or Native family, if possible. (Section 57) Also, if the residence falls within the provisions for residential review in Section 35, there must be a review by the local Residential Placement Review Committee.

Foster Parents

The Act recognizes the major contribution foster parents make to the care of children, particularly with children for whom adoption is not a realistic alternative. (Section 57)

To provide stable relationships for these children, foster parents who have cared for a child who has been a Crown ward for at least two years:

- are entitled to have 10 days notice before the child is removed from their home;
- have the right to a review or a hearing by the children's aid society before the child is removed;
- have the right to appeal a proposed removal to the Ministry.

In addition, where the above mentioned long-term foster care arrangements exist, the birth parents cannot obtain a review of their child's status or original court order without the prior permission of the court. (Section 60 (5))

Reporting Child Abuse

The provision that requires everyone to report to a children's aid society the name of any child they believe is the victim of abuse and in need of protection has been retained. But the Act clarifies which professionals and officials are subject to a fine if they do not report a suspected case of abuse. The list includes all health care professionals, teachers, clergymen, youth and recreation workers (not including volunteers), peace officers, solicitors and service providers. (Section 68)

Child Abuse Review Teams

The new Act gives legislative recognition to the interdisciplinary, community based child abuse teams which advise the local children's aid society on dealing with victims of child abuse and requires that every society establish a review team. (Section 69)

Child Abuse Register

The provincial Child Abuse Register, which is a record of child abusers kept by the Ministry, continues under the new Act without major change. (Section 71)

Also continued is the right of a person to be informed that his or her name is on the register and to ask for a hearing to have the name removed. If removal or amendment is refused, the person can appeal to the Supreme Court of Ontario.

Restraining Order

A new provision in the Act allows the court to order a person to stay away from a child who has been found in need of protection. For example, the court could deny access to someone who has physically abused the child. (Section 76)

Liability

For the first time child protection workers are protected from civil liability for any action taken in good faith under this Part. (Section 71 (4) and 40 (6)) The Act also provides for similar protection for any officer or employee of a children's aid society in carrying out their duties. (Section 15 (6))

Offences

Part III lists a number of offences which include:

- contravening an order for access;
- failing to report suspected child abuse;
- releasing information from the child abuse register;
- leaving a child unattended;
- supplying false information, obstructing or interfering with a child protection worker;
- placing a child in the care and custody of a children's aid society except in accordance with the Act.

A person guilty of an offence under this Part is liable for a fine and, or jail. (Section 81)

In response to the federal Young Offenders Act (YOA), which replaces the Juvenile Delinquents Act, the Ontario government enacted the Young Offenders Implementation Act (1984) to enable the Minister of Community and Social Services to provide services and programs to children, when aged 12 to 15 years inclusive, who commit offences under the Criminal Code or Provincial Offences Act. Part IV incorporates this legislation and provides guidelines for levels of security for temporary detention and custody and authorization for the appointment of various officials.

Levels of Temporary Detention and Custody

The YOA, a federal statute, provides that a young person who is arrested or detained may be kept in a place of temporary detention. If that person is found guilty the youth court judge may order him or her committed to a place of open or secure custody.

The Child and Family Services Act further defines the levels of detention and secure custody programs in Ontario and provides guidelines as to when the most secure level may be used.

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- Maximum secure custody or secure temporary detention are programs where restrictions on a young person's liberty are continuously imposed by physical barriers, including locked doors, close supervision or limited access to the community. Medium secure custody facilities are programs in which such restrictions are less stringent. (Section 85)

- A young person committed to secure custody under the YOA is to be held in medium security unless a provincial director determines otherwise and the guidelines for maximum security are met. (Section 90)
- Open custody includes facilities such as community residential centres, group homes, child care institutions or forest and wilderness camps. (Young Offenders Act definition)
- Open temporary detention is to be used unless a provincial director determines otherwise and the guidelines for secure detention are met. (Section 89)

Provincial Director

When the youth court has made an order for either open or secure custody, a provincial director will decide the specific facility that the young offender will enter. If secure custody is ordered a provincial director will determine, within the guidelines, if maximum security is necessary. (Section 90 (2))

A provincial director is also responsible for such duties as transferring offenders between institutions, and programs, within a given security level, granting a temporary release to the community, recommending early release and transferring an offender from open to secure custody for up to 15 days for misbehaviour or attempted escape.

Custody Review Board

The new Act establishes a Custody Review Board which shall upon application of a young offender, review:

- a decision to use maximum secure custody;
- the particular place of custody;
- a refusal of temporary release;
- a transfer from open to secure levels of custody. (Sec 92)

The Board may make recommendations to the Provincial Director concerned or confirm the Director's original decision.

The Act incorporates rights for children in residential care including children in foster care or those placed by an order under the Young Offenders Act. The provisions are not entirely new as much of the content is now in the Children's Residential Services Act. Part V contains a list of fundamental rights to which every child in residential care is entitled. This part also provides a strong enforcement mechanism through an expanded complaint and review procedure.

Children's Rights

A child in care has the right to:

- reasonable privacy, uncensored mail, receive visits, personal property, religious instruction, education, recreation, food, clothing, medical and dental care and a plan of care;
- be free from corporal punishment;
- not be detained or locked up and not to be unduly restricted other than what has been authorized for young offenders or for extraordinary measures under Part VI;
- be informed of the rights under this Act;
- be informed of complaints procedures;
- be consulted and heard when major decisions affecting his or her life are being made;
- participate in the development of his or her plan of care and to be consulted and to express views when significant decisions are being made. (Sections 96, 97, 99 to 104)

Complaint and Review Procedures

A service agency that provides residential care or that places a child in residential placements must have a written, internal procedure for handling complaints about alleged violations of children's rights guaranteed under this Act. Any child in residential care must have access to that complaint procedure. In addition, parents and interested third parties may also lodge a complaint. If the person who complained is not satisfied with the outcome of the internal review, he or she can ask the Minister to appoint a person to conduct a further review. (Section 105).

Office of Child and Family Service Advocacy

The Act includes a provision for the Minister to establish an Office of Child and Family Service Advocacy. This office would co-ordinate and administer a system of advocacy (except for advocacy before a court) on behalf of children and families who receive or seek services. The office would also advise the Minister on matters and issues concerning the interests of those children and families.

An Advocacy Unit has been functioning in the Ministry for several years. This important service is now recognized in the statute.

There has been growing public recognition that appropriate controls should be placed on some treatment methods used in children's services. Part VI of the Act outlines, for the first time, guidelines and procedures to ensure that extraordinary measures are used only when absolutely necessary and that similar criteria and safeguards are used throughout the Province.

Secure Treatment

In a secure treatment facility or program, continuous restrictions are placed on the liberty of children. This may include locked units and locked facilities. The criteria for admission to these facilities is explicit and narrowly defined. Only if there is a mental disorder combined with recent behaviour which has been dangerous to self or others or there is a need to prevent personal injury can a child be admitted to such a facility. In addition, children under 12 years of age can only be committed with the consent of the Ministry. The Act provides for emergency admissions and admissions on consent.

The procedures for admitting a child to a secure treatment facility are strictly regulated. Once an application has been made to commit a child, the court must hold a hearing within 10 days and the child must have a lawyer at that hearing. Emergency admission prior to a hearing is allowed in accordance with precise requirements and a court hearing must be held within five days. The initial commitment cannot exceed 180 days. Upon application, the court may order an extension of another 180 days. Further extensions can also be ordered. (Sections 109 to 119)

Secure Isolation

Secure isolation or confinement in a locked room is sometimes necessary to provide a temporary means of restraining a child who has become aggressive or violent. Children may be placed in secure isolation if their conduct indicates they are likely to cause serious property damage or bodily harm to another and less restrictive measures are not practical. If the child is under 12, a Director must give permission to use secure isolation, and only when there are exceptional circumstances. Each secure isolation room must be approved by the Ministry. (Sections 120, 121)

To ensure that secure isolation is used only as a last resort, strict criteria and procedures have been developed. Children may only be placed in secure isolation in accordance with the Act. A child in secure isolation must be watched continuously. The child must be released in one hour unless the person in charge of the premises approves an extension and records the reasons for the extension, explaining why less restrictive measures would not suffice. The maximum amount of time a child can spend in isolation is eight hours in any one day and 24 hours in any seven day period. (Section 121(8)) A service provider that has a secure isolation room must, every three months, review its use and make a report to a Director. (Sections 121, 122)

Intrusive Procedures

The Minister may approve a service provider for the use of specified intrusive procedures. Intrusive procedures are those techniques that intrude, invade or encroach on a child's body such as:

- the use of mechanical restraints to control behaviour, for example handcuffs or strait-jackets;
 - aversive stimulation techniques which result in the reduction or elimination of undesirable behaviour. (Section 124)
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Review Team

The use of intrusive procedures by any agency must be approved by the Ministry and the agency must have an interdisciplinary review team to approve or refuse the proposed use of an intrusive procedure. That approval must be received not more than 30 days before the intended procedure is to be used. There is provision for emergency use of intrusive procedures without prior approval and the Act does not prohibit reasonable use of restraints with children detained or committed to custody under the Young Offenders Act. (Sections 123 to 125)

The interdisciplinary review team will approve the use of an intrusive procedure only if:

- at least one less intrusive alternative was attempted without success;
- no other less intrusive procedure can be used; and
- the child who is 16 or more has consented to the procedure, or the parents or society have consented in the case of a child under 16 years;
- the child's behaviour warrants its use, and it is reasonable to expect that the procedure would improve the child's behaviour.
- From time to time it may be necessary to recommend that a child, who is in the care of a service provider, undergo one of the following:
 - non-therapeutic medical and chemical experimentation;
 - psychosurgery;
 - non-therapeutic sterilization; or
 - electro-convulsive therapy.

In order to ensure that such procedures are done only when absolutely necessary, the review team, including a qualified medical practitioner, shall review the circumstances that led to such a recommendation and advise the child's parents about the appropriateness of the proposed action. The Act also specifies that these procedures are not to be carried out in any facility or residence operated by or under the jurisdiction of the Ministry. (Section 127)

Psychotropic Drugs

The Act also sets down specific criteria of what must be explained and understood before a person can give his/her informed consent to the use of a psychotropic drug, that is a mood-altering or behaviour-controlling drug.

A person must be informed of:

- the condition the drug is intended to alleviate;
- the range of intended dosages;
- any risks and possible side effects from each intended dose; and
- the frequency and period of time the drug is to be administered.

There is provision for limited emergency use of these drugs without prior consent. (Section 126)

Professional Advisory Board

Regulating the use of extraordinary measures is complex. Recognizing this, the Act provides for the Minister to establish a professional advisory board of physicians and other professionals to provide advice and to review practices and procedures related to extraordinary measures. Any person may request the Minister to refer a matter relating to intrusive procedures, psychotropic drugs or secure isolation to the board for investigation and review. (Section 128)

There are no major changes in the new Act, Part VII, to the current adoption process. However certain features have been included to ensure the legislation conforms to the provisions of the Ontario Human Rights Code.

In the past, persons who were single, separated, widowed or divorced were unable to become adoptive parents unless the court decided there were special circumstances justifying the adoption order. The new Act provides that any person may apply to adopt children. (sec 140)

Common-law spouses may now apply jointly to adopt a child. Also birth parents have the right to be told if their child has been adopted (Section 155) and foster parents whose adoption application has been refused have the right to a review by a Director. (Section 138)

Provisions controlling private individuals who arrange adoptions require them to meet the same standards as private agencies before being eligible for an annual licence. This means that these licence holders must provide birth parents with the opportunity to obtain independent counselling and legal advice prior to consenting to an adoption. The minimum standards each licence holder must meet will be included in the regulations to the Act.

There are a number of new provisions concerning the adoption of Indian and Native children. These are highlighted in Part VII.

Confidentiality and Disclosure of Information

The main provisions dealing with the voluntary disclosure of adoption information and the Voluntary Disclosure Register remain the same. Identifying information will be released only with the consent of all parties concerned - the adoptive parents, the birth parents and the adopted child, when he or she reaches the age of 18. There are exceptions to this. If an adoptive parent or birth parent has died or is declared mentally incompetent consent is not necessary. If the adoption breaks down and the child is made a Crown Ward without access to the adoptive parents, their consent is not required. (Section 158)

The Act allows for the disclosure of information needed to protect any person's health. This decision will be made by a Director. Information can also be released to another government department for such reasons as the need to obtain a birth certificate, passport, or visa. (Section 157)

If children and parents are to participate in the decisions that affect their rights and interests - a right guaranteed under this law - they must have access to their records kept by service agencies. They must know that the information contained in their records is protected from inappropriate distribution. Part VIII of the Act contains detailed provisions that clarify who does and who does not have the right of access to records and when an agency can and cannot disclose records without the consent of the child or parent.

What Records are Included?

A record is considered to be all recorded information, (except for that noted below), that is under the control of a service provider and that was recorded in connection with a service being provided.

The following are exempt from the provisions of this section:

- records obtained during a child abuse investigation;
- the child abuse register;
- records relating to adoption;
- the voluntary adoption disclosure registry;
- clinical records as defined in the Mental Health Act;
- medical records as defined in the Public Hospitals Act;
- records relating to a patient as defined by the Health Disciplines Act

Also exempt is information recorded prior to this Act becoming law. (Section 163)

Access Rights

The Act gives parents and children 12 years of age or over the right, with some exceptions, to see their complete record kept by the service agency. But records created while counselling a child 12 or older as provided for in the Act, can only be disclosed to that child's parents with the child's permission. At the same time, parents also have the right, if their child is under 16, to designate specific information in the child's record that relates to the parent as restricted, and not to be disclosed to the child. (Section 167).

Once a person has requested access to the record, the agency has 30 days to release the information or explain why it has been withheld. (Section 169(1)).

Not all records have to be released. The new Act provides some flexibility to service providers in deciding whether access to information should be granted. Specifically, information can be denied:

- if the child is under 16 and the information could cause physical or emotional harm;
- if the record contains the name of another person and the disclosure is likely to cause physical or emotional harm to that person;
- if the name of a person who provided information is in the record but that person is not engaged in providing services.

In addition, medical, emotional, developmental, psychological, educational or social assessment results can also be withheld. (Section 168)

A person who is denied the right to see his or her record may appeal to the Children's Services Review Board within 20 days. The Board may uphold the refusal; order that access to all or part of the record be granted, or order that corrections be made to the record. (Section 171)

Disclosure

In most instances the new Act provides that no person's record shall be released to a third party without the consent of the child's parent or the society or the individual if 16 years or older. There are cases, however, where disclosure without consent is permitted. Those to whom information may be released include:

- service providers who need the information to carry out their duties, including foster parents;
- a children's aid society if the child is under that society's care on a child protection order or a temporary care or special needs agreement;
- a peace officer or medical personnel if the need is urgent and failure to disclose the information could cause the person harm;
- members of a child abuse review team. (Section 165, 166).

A person who believes that a service provider may have disclosed his or her record without authority may request a review by the Children's Services Review Board. If satisfied that a disclosure was unauthorized the Board may order the service provider to change its procedures, to stop its particular disclosure practice, or may even recommend to the Minister that the service provider's licence, or approval under the Act, be revoked. (Section 171)

A service provider who discloses a person's record in good faith and in accordance with the provisions of this section, is protected from civil liability. (Section 173)

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Licensing

This section of the Act, Part IX, consolidates the existing provisions which govern the licensing of residential services and private individuals or agencies who place children for adoption. It also continues the present Children's Services Review Board.

As noted in the section on Adoption, private individuals who are licensed to arrange private adoptions must meet the same standards as private agencies. Licences will be granted on an annual basis.

Indian and Native Child and Family Services

The new Act recognizes that Indian and Native people should be entitled to provide, whenever possible, their own child and family services, and that all services to Indian and Native children and families should be provided in a manner that recognizes their culture, heritage and traditions and the concept of the extended family.

Part X contains new features to provide for the development of Indian and Native child and family services by Indian Bands and Native communities. Other parts of the Act also provide for the involvement of Indian Bands and communities in court proceedings and other matters affecting their children and families.

Indian and Native Child and Family Services

The Act's recognition of the integrity and autonomy of Indian and Native communities goes further. For the first time such communities will have the opportunity to establish their own child and family service authorities.

Under the new Act, the Minister may make agreements with Bands or Native communities for the provision of services. A Band or Native community may designate a body as an Indian or Native child and family service authority which may enter into negotiations with the Minister to provide services. The new Act also enables the Minister to designate the Indian or Native child and family service authority, with its consent, as a children's aid society. (Sections 193 and 194)

The concept of “customary care” is recognized in the legislation as the care given a child in accordance with the customs of his or her Indian or Native community. (Section 191) Persons caring for children under customary care arrangements may be granted customary care subsidies under the new Act. (Section 195)

Court and other Proceedings

When decision-makers are considering what course of action would be in the best interests of an Indian or Native child, the new Act provides clear instructions that the child’s Indian or Native heritage is to be a paramount consideration. (Section 34, 37 and 130)

If the court makes a decision to remove a Native or Indian child from his or her home, it must place the child with a member of the child’s extended family, a member of the child’s Band or Native community, or another Indian or Native family, unless there are substantial reasons for placing the child elsewhere. (Section 53) The society having the care of an Indian or Native child is also required to choose, if possible, a residential placement with a member of the child’s extended family, a member of the child’s Band or Native community or another Indian or Native family. (Section 57)

The new Act provides for Bands and Indian and Native communities to:

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- have representation on the board of directors of agencies which serve their children and families; (Section 13)
 - have representation on Residential Placement Advisory Committees; (Section 34)
 - participate in residential placement hearings; (Section 36)
 - have status as a party in child protection hearings; (Section 39)
 - apply for access orders and receive notice of such applications from a children’s aid society; (Section 54)
 - apply for restraining orders; (Section 76)
 - receive a copy of assessment reports before being considered at a hearing; (Section 50)
 - apply for review of a child’s status and receive notice of applications from children’s aid societies; (Section 60)
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- receive 30 days written notice of the intent to place a Native or Indian child for adoption; (Section 134)
 - be advised of recommendations made by residential placement advisory committees. (Section 35)
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Consultation

The new Act requires any children's aid society or agency providing services or exercising power under the Act with respect to Indian and Native children to consult regularly those Bands or Native communities about the provision of services, the exercise of the powers, and about matters affecting the children. This includes:

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- the apprehension of children in need of protection;
 - the placement of children in residential care;
 - the placement of homemakers in a home and the provision of other family support services;
 - adoption placements;
 - temporary care and special needs agreements;
 - child protection status reviews;
 - the preparation of plans for the care of children; and
 - the establishment of emergency housing. (Section 196)
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Part XI of the Act sets out the various regulations that may be made. Regulations in place at the time of proclamation will be a combination of regulations carried over from the previous statutes, with any necessary changes made to make them consistent with the new Act, and new ones required to facilitate smooth implementation of the provisions in the Act.

Over the long term, the Ministry will continue to review, revise and develop new regulations through discussions, where appropriate, with those affected by the regulations.



Ontario

Ministry of
Community and
Social Services

Dear Colleague:

I am pleased to send you this copy of *Highlights of the Child and Family Services Act* which has just been published, and to bring you up-to-date on some of the many activities that have been going on to prepare for implementation of the new Act.

Although we have all been working toward the July 1, 1985, proclamation date, some provincial associations and individual agencies and service providers have asked us to consider a later date. They point out that implementation at the height of the summer holiday season would present significant difficulties in adapting their procedures to new policies, guidelines and regulations.

I have consulted with the Minister, Dr. Robert Elgie, who agrees that these requests are reasonable. An extension will allow more time for service providers to review and plan for the implementation, especially during the summer period, and for the continuation of Ministry special training and follow-up sessions.

Therefore October 1, 1985, has been selected as the proclamation date with phase-in periods, as originally planned, for certain sections of the Act.

More information about this and other implementation activities is contained on the following pages.

Thank you for your continued co-operation.

Yours truly,

A handwritten signature in dark ink, appearing to read "Robert M. McDonald".

Robert M. McDonald
Deputy Minister

Training

More than 100 Ministry and agency staff are providing an extensive training and orientation program in some 1,200 sessions. These sessions are scheduled for completion by the end of June. Special training and follow-up sessions will be provided during the month of September.

Training materials have been prepared and a complete set will be sent to each agency. Additional training materials will be developed as they become necessary and will continue to be provided.

Regulations

Necessary regulations are in the process of being finalized and will be provided to each agency prior to proclamation. These are largely a consolidation of existing regulations. In the initial stages it is our intention to use guidelines as much as possible and new regulations will be drafted after some experience and feedback.

Flexible Services

The flexible services system will be phased in gradually, as originally planned, to be fully operational at the beginning of the agencies' new budget year to allow appropriate budget and service plans preparations in accordance with the new requirements.

In the meantime, existing funding, licensing and other arrangements with agencies will continue under transitional provisions and interim regulations.

Residential Placement Advisory Committees

These committees (RPACs) will be set up through the Ministry's area offices in consultation with local service providers. They will be established to reflect local conditions and will come into effect three months after proclamation.

Indians and Natives

Because of the effect of Part X and other sections of the Act affecting Indian and Native persons, we will continue our consultations with Indian and Native organizations to facilitate further planning. To accommodate this consultation process Part X will come into effect six months following proclamation. The other related sections of the Act will be implemented in consultation with the appropriate Native and Indian organizations.

Extraordinary Measures

To allow time for further consultation and for advice from the professional advisory committee on the development of the definitions and procedures affecting intrusive procedures and psychotropic drugs, these sections will be effective three months after proclamation.

Adoption Information

The Minister has appointed Dr. Ralph Garber, Dean of Social Work, University of Toronto, to review specific parts of the Act related to disclosure of adoption information.

Dr. Garber will examine submissions received during consultations on the Act, those made to the Standing Committee on Social Development, and related debates in the Legislature and its Committees.

The Commissioner has been asked to pay particular attention to the desirability of releasing information on the consent of two parties, the birth parent and the adult adoptee fully considering the interest of the adoptive parents. He will examine whether non-identifying information should be more readily available than it is now, under what circumstances and to whom. Other matters include the role that counselling should play in the event of disclosure of information or reunions.

Dr. Garber will report to the Minister by early fall. Until Dr. Garber comes forward with his recommendations, we will continue to use the current provisions under the Child Welfare Act. Following receipt of Dr. Garber's report, further decisions will be made regarding this matter.

Operations Manuals

Manuals covering Family Services, Children in Care, Custody and Probation are ready for distribution. Other manuals will be provided as required for implementation.

Records

In order to allow time for service providers to make necessary changes to records systems and procedures to comply with the Act, Part VIII will become effective three months after proclamation.

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